IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
TESTAMENTARY AND INTESTATE JURISDICTION

APPEAL NO. 80 OF 2000
IN
REPORT DATED 9TH MARCH 1999 SUBMITTED BY THE LEARNED ADMINISTRATOR JUSTICE M.L.DUDHAT(RETD.)
IN
MISC.PETITION NO. 13 OF 1995
IN
T.& I.J.PETITION NO.598 OF 1990

Mrs. Lyla Darius Jehangir (nee Ghaswala) of Mumbai Indian Inhabitant, residing at Gazdar House, 45 Warden Road, Mumbai -400 026. .. Appellant. (Org.Respondent No.1 to Petition)

V/s.

1. Bakhtawar Lentin of Mumbai Parsi Zorastrain Inhabitant residing at Chateau Marine, Marine Drive, Mumbai-20.
2. Mohan Motiram Jaykar of Mumbai, Hindu Inhabitant, a Solicitor and Partner in the firm of M/s.Gagrat & Co.,Advocates, Solicitors and Notaries, Bombay having their office at Alli Chambers, Nagindas Master Road, Fort, Mumbai - 400 001.
3. Mrs. Roshan Mahendragir Chopra of Mumbai Muslim Inhabitant, residing at Samudar Mahal, Dr.Annie Beasant Rd., Worli, Mumbai- 400 018.

All being the Executors, Executrix & Trustees - .. Respondents Nos.1 to 3 -

appointed by the deceased Ms.Piloo Ghaswala Pursuant to her last Will and Testament (since discharged).	))))	(Org.Petitioners to petition).
4. Mrs.Anita Sanjeev Malhotra (nee Ghaswala) residing at Gazdar House, 45, Warden Road, Mumbai -400 026.	)))))	
5. Ms.Zenia Darius Jehangir, a minor through her guardian-ad-litem.	))))	.. Respondents Nos.4 to 6 - (Org.Respondents Nos.2 to 4 to Petition).
6. The Administrator General of the State of Maharashtra), having his office at P.W.D. Building, Fort,Mumbai-23.	)))	

AND

7. Darius Jehangir of Mumbai Indian Inhabitant, residing at Himalaya Bldg. 2nd floor, Flat No.5, Worli Sea Face Rd., Mumbai - 400 018.	)))))	.. Respondent No.7. (Org.Applicant in Misc.Petition No.50 of 1999).

WITH

APPEAL NO. 81 OF 2000
IN
NOTICE OF MOTION NO. 2566 OF 1999
IN
TESTAMENTARY PETITION NO. 598 OF 1990

Mrs. Lyla Darius Jehangir (nee Ghaswala) of Mumbai Indian Inhabitant, residing at Gazdar House, 45 Warden Road, Mumbai -400 026.	)))))	.. Appellant. (Org.Respondent No.1 to Petition & N/ of Motion)

V/s.

1. Bakhtawar Lentin of Mumbai Parsi Zorastrain Inhabitant residing at Chateau Marine, Marine Drive, Mumbai-20.

2. Mohan Motiram Jaykar of Mumbai, Hindu Inhabitant, a Solicitor and Partner in the firm of M/s.Gagrat & Co.,Advocates, Solicitors and Notaries, Bombay having their office at Alli Chambers, Nagindas Master Road, Fort, Mumbai - 400 001.

3. Mrs. Roshan Mahendragir Chopra of Mumbai Muslim Inhabitant, residing at Samudar Mahal, Dr.Annie Beasant Rd., Worli, Mumbai- 400 018.

All being the Executors, Executrix & Trustees - appointed by the deceased Ms.Piloo Ghaswala Pursuant to her last Will and Testament (since discharged). .. Respondents Nos.1 to 3 - (Org.Executors appointed under the Will & Org. Petitioners, since discharged)

4. Mrs.Anita Sanjeev Malhotra (nee Ghaswala) residing at Gazdar House, 45, Warden Road, Mumbai -400 026.

5. Ms.Zenia Darius Jehangir, a minor through her guardian-ad-litem. .. Respondents Nos.4 to 6 - (Org.Respondents)

6. The Administrator General of the State of Maharashtra), having his office at P.W.D. Building, Fort,Mumbai-23.

AND

7. Darius Jehangir of Mumbai

Indian Inhabitant, residing at Himalaya Bldg. 2nd floor, Flat No.5, Worli Sea Face Rd., Mumbai - 400 018.) .. Respondent No.7 (Org.Applicant in N/of Motion)

8. Justice M.L.Dudhat (Retd.) of Mumbai Indian Inhabitant, r/a. Hari Krupa, 10th Rd,Chembur,Mumbai-71) .. Respondent No.8 (Org.Respondent-2 to N/M since discharged).

AND

9. Lalu C. Tolat of Mumbai Indian Inhabitant practising as an Advocate & Solicitor in the name & style of Messrs.L.C.Tolat & Co., and having office at Yashwant Chamber, 2nd floor, 18, B.Bharucha Marg, Mumbai-400 023.) .. Respondent No.9 (Org.Respondent No.2 to N/M.)

Mr.M.L.Palan with Ms. Neeta Solanki, Mr.Kiran Jain & Ms. Nadia Basiri i/by M/s. Kiran Jain and Co. for the Appellant (in both the Appeals).

Mr. Rajeev Kumar with Miss P.L.Bachani and Shilpi Thakkar i/by I.R.Joshi & Co. for the Respondent Nos. 5 and 7.

Mr.J.B.Chinoy with Mr.R.L.Tolat i/by M/s.Harakchand & Co.for the Respondent No.9 in Appeal No.81 of 2000 only.

WITH

APPEAL NO. 163 OF 2005
IN
ORIGINATING SUMMONS NO. 309 OF 2000
IN
SUIT NO. 686 OF 2000

Mrs. Lyla Darius Jehangir (nee Ghaswala) of Mumbai Indian Inhabitant, residing at Gazdar House, 45 Warden Road, Mumbai -400 026. .. Appellant. (Org.Plaintiff in suit)

V/s.

1. Bakhtawar Lentin (since deceased) of Mumbai Parsi Zorastrain Inhabitant residing at Marine Drive, Mumbai-400 002.

2. Mohan Motiram Jaykar of Mumbai, Indian Inhabitant, a Solicitor and Partner in the firm of M/s.Gagrat & Co.,Advocates, Solicitors and Notaries, Bombay having their office at Alli Chambers, Nagindas Master Road, Fort, Mumbai - 400 001.

3. Mrs. Roshan Mahendragir Chopra of Mumbai Muslim Inhabitant, residing at Samudar Mahal, Dr.Annie Beasant Rd., Worli, Mumbai- 400 018.

AND

4. Ms.Zenia Darius Jehangir, a minor through her guardian, mother of Plaintiff Lyla Jehangir r/a. Himalaya Building, Worli Sea Face Road,Mumbai. .. Respondents (Org.Defendants in Suit).

WITH

APPEAL NO. 164 OF 2005
IN
ORIGINATING SUMMONS NO. 447 OF 2003
IN

SUIT NO. 738 OF 2003

Lyla Darius Jehangir nee of Ghaswala of Mumbai, Indian Inhabitant, residing at 2nd floor, B.Desai Road, Mumbai-26)	..	Appellant. (Org.Plaintiff in Suit).

V/s.

Zenia Darius Jehangir of Mumbai) Indian Inhabitant, r/a.Himalaya) Building, Plot No.5, 2nd floor,) Worli Sea Face Rd, Mumbai-018.)	..	Respondent. (Org.Defendant in suit).

WITH

APPEAL NO. 508 OF 2005
IN
NOTICE OF MOTION NO. 3298 OF 2003
IN
MISC. PETITION NO. 13 OF 1995
IN
TESTAMENTARY PETITION NO. 598 OF 1990

Mrs. Lyla Darius Jehangir (nee Ghaswala) of Mumbai Indian Inhabitant, residing at Gazdar House, 45 Warden Road, Mumbai -400 026.	..	Appellant. (Org.Respondent No.1)

V/s.

1. Bakhtawar Lentin of Mumbai Parsi Zorastrain Inhabitant) residing at Chateau Marine,) Marine Drive, Mumbai-20.
2. Mohan Motiram Jaykar of Mumbai, Hindu Inhabitant, a Solicitor and Partner in the firm of M/s.Gagrat & Co.,Advocates, Solicitors and Notaries, Bombay

having their office at)
Alli Chambers, Nagindas)
Master Road, Fort,)
Mumbai - 400 001.)
)
3. Mrs. Roshan Mahendragir) .. Respondents.
Chopra of Mumbai Muslim)
Inhabitant, residing at)
Samudar Mahal, Dr.Annie)
Beasant Rd., Worli,)
Mumbai- 400 018.)
)
All being the Executors,) .. Respondents
Executrix & Trustees -) Nos.1 to 3 -
appointed by the deceased) (Org.Petitioners
Ms.Piloo Ghaswala Pursuant) to petition).
to her last Will and Testa-)
ment.)

4. Ms.Zenia Darius Jehangir) .. Respondent No.4
of Mumbai Indian Inhabitant) (Org.Applicant)
r/a. Himalaya Bldg., Plot)
No.5, 2nd floor, Worli Sea)
Face Road, Mumbai-400018.)
)
5. Mrs.Anita Sanjeev Malhotra)
(nee Ghaswala) residing at)
Gazdar House, 45, Warden)
Road, Mumbai -400 026.)
)
6. The Manager, Bank of Baroda)
Bhulabhai Desai Road,)
Mumbai 400 026.)
)
7. The Manager, The Hongkong &) .. Respondents
Shanghai Banking Corporation) Nos.5 to 8.
Ltd., M.G.Road,) (Org.Respondents
Mumbai - 400023.) Nos.2 to 5).
)
8. The Court Receiver, High)
Court, Bombay.)

Mr.M.L.Palan with Ms. Neeta Solanki, Mr.Kiran Jain & Ms. Nadia Basiri i/by M/s. Kiran Jain and Co. for the Appellant in all the Appeals.

Mr. Rajeev Kumar with Miss P.L.Bachani and Shilpi Thakkar i/by I.R.Joshi & Co. for the Respondent in Appeal No.164/2005 and for the Respondent No.4 in Appeal

No.163 /2005 and Appeal No.508/2005.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 12th DECEMBER, 2006 AND 13th DECEMBER, 2006.

ORAL JUDGMENT : (PER R.M.LODHA,J.):

. This group of five Appeals is between the same parties and interconnected issues are raised therein and accordingly, by this common judgment, we shall dispose of these five Appeals.

2. The Appeal Nos. 163 of 2005 and 164 of 2005 are from Originating Summons Nos.309 of 2000 and 447 of 2003 respectively. We shall first deal with Appeal No. 164 of 2003, since the fate of other appeals is dependant on the decision in this appeal. As a matter of fact the whole focus of Mr.M.L.Palan, the counsel for the appellants was on appeal No.164 of 2005, arising from originating summons No.447 of 2003. According to him, the decision in appeal No.164 of 2005 shall virtually decide all appeals.

3. By originating summons No. 447 of 2003, the Appellant prayed for determination of the following issues by the Court :

(a) Whether the bequeaths made in favour of the Plaintiff by the deceased Pilloo under the said Will dated 12th April, 1989 interalia under clauses 11,13,14,15, 18,24,40 and 42 are absolute bequeaths to the Plaintiff ?

(b) Whether the directions of the deceased Piloo interalia in said Will including in clauses 11,13,14,15,18,24,40 & 42 of the said Will viz. to hold the shares/ bequeathes of the Plaintiff upon trust to be handed over to Defendant on her attaining the age of 21 years are illegal and or in-operative or unenforceable against the Plaintiff or binding upon the Plaintiff or beyond the power and authority vested on the deceased Pilloo?

(c) Assuming without admitting that the directions in the said Will including in clauses 11,13,14,15,18,24,40 & 42 to hold shares of Plaintiff upon trust to be handed over to Defendant on her attaining the age of 21 years are legal and binding upon the Plaintiff and/ or Defendant. Whether Plaintiff alone is entitled to enjoy all the bequeaths/ profit/ income and other benefits till Defendant attained age of 21 years.

4. The answers to the aforesaid questions have to be found from the Will dated 12th April, 1989 executed by Pilloo M.Ghaswala, as her last testamentary disposition.

5. The Will indicates that Pillo Ghaswala was the lady of wealth. Her estate comprised of immovable and movable properties. Pillo had two daughters -Lyla and

Anita. Lyla has one daughter by name Zenia. Anita is divorcee and issue less. Pillo died on 7th October, 1989.

6. Before we turn to the Will which is to be construed by us, we deem it proper to refer to the relevant provisions of the Indian Succession Act, 1925, particularly Chapter VI of Part VI, which deals with the construction of Wills.

. Section 74 says that it is not necessary that any technical words or terms of art be used in a Will, but only that the wording be such that the intentions of the testator can be known therefrom.

. Section 75 enables the court to inquire into the questions as to the object or subject of a will and for determination thereof, take evidence, if necessary.

. While section 80 permits an extrinsic evidence to be taken where the words of a Will are unambiguous, but for its applications extrinsic evidence may be necessary. But section 81 makes extrinsic evidence inadmissible

in case of patent ambiguity or deficiency.

. Section 82 highlights that the meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other.

. Section 85 provides that no part of a Will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it. With regard to interpretation of words repeated in different parts of Will, Section 86 provides that if the same words occur in different parts of the same Will, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears.

. Section 87 provides the Testator’s intention to be effectuated as far as possible. In a case where the inconsistent clauses of gifts in a Will are irreconcilable, Section 88 says that the last shall prevail.

. Section 95 provides that the property by way of bequest to any person, he is entitled to

the whole interest of the testator therein, unless it appears from the Will that only a restricted interest was intended to him.

. As per section 104, if a legacy is given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies, it shall pass to his representatives.

. Section 119 makes a provision where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator’s death,and shall pass to the legatee’s representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator’s death said to be vested in interest.

7. The construction of the Wills has been the

subject matter of consideration before the Supreme Court from time to time. In long line of cases the Supreme Court has dealt with this subject. Some of these cases, being Ram Gopal vs. Nand Lal-A.I.R.1951 S.C.139; Venkata Narasimha's case and Gnanambal Ammal vs. T.Raju Ayyar-1951 S.C.103; Raj Bajrang Bahadur Singh vs. Bakhtraj Kuer-A.I.R.1953 S.C.7; Pearey Lal vs. Rameshwar Das-A.I.R.1963 S.C.1703 and Ramchandra Shenoy & anr. vs. Mrs.Hilda Brite & Ors.-A.I.R.1964 S.C. 1323 were considered by the Supreme Court in the case of **Navneet Lal alias Rangi vs. Gokul & Ors., AIR 1976 S.C. 794** and culled out the following principles :-

> "(1) In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances are to be considered; but that is only for the purpose of finding out the intended meaning of the words which have actually been employed.
>
> (2) In construing the language of the will the court is entitled to put itself into the testator's armchair and is bound to bear in mind also other matters than merely the words used. It must consider the surrounding circumstances, the position of the testators, his family relationship, the probability that he would use words in a particular sense. But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document.
>
> (3) The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as

> a whole with all its provisions and ignoring none of them as redundant or contradictory.
>
> (4) The court must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative. The court will look at the circumstances under which the testator makes his will, such as the state of his property, of his family and the like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. Further where one of the two reasonable constructions would lead to intestacy, that should be discarded in favour of a construction which does not create any such hiatus.
>
> (5) To the extent that it is legally possible, effect should be given to every disposition contained in the will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a Court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the Will."

8. We need not multiply the authorities as the legal provisions enshrined in the Indian Succession Act and the principles culled out by the Supreme Court in respect of construction of the Wills, provide enough guidance, approach and direction for construction of the Wills.

9. At this stage, we may also refer to the provisions of the Bombay High Court (Original Side) Rules, 1980 relating to the Originating Summons. Rule 238 provides for an application for the issue of originating summons in respect of the matters contained therein, interalia, the question affecting the rights or interest of the persons claiming to be devisee, legatee or beneficiary under an instrument. The whole object of this procedure for issuance of the originating summons is to make a procedure available to the parties which is inexpensive but at the same time in substance for determination of the disputes as to construction of the written instrument. In the proceeding by way of Originating Summons, the dispute is settled by the court, interpreting the instrument and determining what the rights of the parties are. Pratt,J. in **Vithaldas Cursondas vs. Dulsukhbhai Vadilal Vol. XXI The Bombay Law Reporter- 972,** while dealing with the similar proposition under Rule 223 of the High Court Rules, held that an originating summons is not a proper procedure to be adopted where the disputed facts are of such complexity as to involve considerable amount of oral evidence. This is an action which should be confined to matters being capable of decision in a summary way; not that it forbids the questions of fact being determined on an originating summons in all class of cases.

10. In yet another case of **Rama Aziz Parpia and others vs. Balkrishna K. Mehta,** the learned single Judge of this Court held that an originating summons is not a process for declaration of the rights of the parties, nor is it a lis, as popularly understood. By this, the court is not adjudicating the rights and liabilities of the parties; particularly, when the parties are the legatees and executors, both of whom, being interested in true execution of the terms of the Will. In the words of the learned single Judge : "An originating summons is a means for getting over unexpected, uncontemplated difficulties which crop up during the administration of the estate by Executors or trustees. Finding the difficulty insuperable, the parties approach the Court for indicating the most just and equitable manner of administering the estate, in the circumstances, consistent with the wishes of the testator or settlor, as the case may be."

11. The nature of the proceedings of the originating summons highlighted by the learned single Judges of this court in the case of Vithaldas Cursondas and Rama Aziz Parpia (supra) appear to us to be sound; we approve the same.

12. Now we advert to the instrument (Will) dated 12th April, 1989. By this Will, the testatrix Piloo M. Ghaswala appointed Mr.Justice Bakhtawar Lentin, Mr. Mohan Jayakar and Mrs. Roshan Chopra to be the executors and trustees. The executors and trustees have been collectively referred to in the Will as "My Trustees". Clauses 6 and 7 of the Will are material. These clauses throw strong beam of light on the intention of the testatrix. Clauses 6 and 7 read thus :

> "6. I HAVE two daughters viz. Mrs. Lyla Darius Jehangir and Miss Anita Ghaswala (I have called my daughter Anita Ghaswala by her maiden name as she has already filed a petition for divorce in respect of her marriage to Mr.Balla Toddywalla). My elder daughter Mrs.Lyla Darius Jehangir is an extravagant and irresponsible girl and is subject to fits of depression and it is for this reason that I DIRECT my Trustee by this my Will under the Trust created hereunder to hold all properties bequeathed and devised by me to her for the benefit of her daughter Zenia and the said property bequeathed to Lyla shall be held upon trust for the benefit of her daughter Zenia and upon Zenia completing the age of 21 years, my Trustees shall hand over all such property to Zenia absolutely.
>
> 7. AS STATED above in view of my daughter Lyla being an extravagant and irresponsible girl and being subject to fits of depression, in the matter of sale and dispose off the flat on the 2nd floor of Gazdar House at 45, Warden Road, Bombay 400 026, as mentioned in clause 15 herein, the decision of my Trustee shall be binding on her and the bequest to her shall therefore, be subject to the decision of my Trustees."

13. What is to be seen from these two clauses is

that the Testatrix considered her daughter Lyla an extravagant and irresponsible girl; Lyla suffered from fits of depression. She, therefore, directed the trustees by her Will with regard to the trust created thereunder to hold all the properties bequeathed and devised by her to Lyla for the benefit of Zenia (Lyla's daughter) and the property bequeathed to Lyla to be held upon trust for the benefit of Zenia and upon Zenia's completing the age of 21 years, all such properties were to be handed over to Zenia absolutely.

14. The Will is a long instrument and has in all 48 clauses. The testatrix has used the expression ".....shall be held upon trust for the benefit of my grand-daughter Zenia, to be given to her on her attaining the age of 21 years....." in some clauses particularly, clauses 8,9, and 10 of the subject will.

15. In clauses 11,13,14,18,24, 27, 40 and 42, the testatrix has used the expression "..... shall belong to Lyla but shall be held upon trust by my trustees, to be handed over to my grand-daughter Zenia on her attaining the age of 21 years. .....".

16. In contradistinction to the aforesaid expression, the testatrix has used the expression

".....I GIVE BEQUEATH AND DEVISE .....to my daughter Lyla, absolutely" in some clauses.

17. In clause 15, she has directed the trustees to dispose of the flat on the 2nd Floor of Gazdar House and out of the sale proceeds of the said flat, purchase two flats, one to be bought in the joint names of Lyla and Zenia and the other flat in the name of Anita to be held by them absolutely.

18. In clauses 21 and 29 the testatrix has used the expression "I HAVE BEQUEATH AND DEVISE .....to my grand-daughter Zenia to be held in trust by my trustees to be handed over to her on her attaining the age of 21 years .....".

19. In so far as Anita is concerned (of course there is no controversy in this regard), the testatrix used the expression ".....BEQUEATH AND DEVISE To my daughter Anita absolutely." This is seen from clauses 12,13,14, 17,19,25,28,30,37 and 41.

20. It needs no elaboration that the clauses in the Will have to be construed with reference to each other and the meaning is to be collected from the entire

instrument. Each of the clauses i.e.11,13,14, 15,18,24,40 and 42 which are to be construed by us have to be seen with reference to each other in the light of the entire instrument. It is in this view of the matter that clauses 6 and 7 are of great importance, wherein the testatrix had indicated her mind and intention as to why she has not bequeathed and devised her properties absolutely to daughter Lyla as she did to her other daughter Anita. Surely the testatrix did not want her legacy to be frittered away because of extravagance and irresponsible behaviour of the her daughter Lyla and, therefore, the bequest and devise was made for the benefit of her grand daughter Zenia, who was minor at that time. Some properties, as set out in different clauses, were to be held upon the trust for the benefit of her grand daughter Zenia and upon Zenia completing the age of 21 years, the trustees were directed to hand over all such properties absolutely to Zenia. At the same time, Lyla was to hold some properties for the benefit of Zenia and upon Zenia completing the age of 21 years, such properties were to be handed over to her. That intention clearly flows from the reading of the Will in its entirety and admits no ambiguity or doubt.

21. Clause 11 of the Will reads thus :

> "11. I HAVE A Locker in the Union Bank of India, Forbeas Building, Home Street, bearing No.5063 in the joint names of myself and my daughter Lyla. I DIRECT my Trustees that the contents of my the said Locker shall belongs to Lyla but shall be held upon Trust by my Trustees to be handed over to my grand-daughter Zenia on her attaining the age of 21 years, the password for the said Locker is 'Lulubella' and the keys of the said locker are kept in my Godrej Safe. I DIRECT that none of the contents of the said locker can be sold."

This clause relates to the locker in the joint names of the testatrix and Lyla. By this clause, the testatrix directs the trustees that the contents of the said locker shall belong to Lyla but shall be held upon Trust and by the Trustees to be handed over to grand daughter Zenia on her attaining the age of 21 years. The expression "belongs to" in the context it has been used by the testatrix cannot be read to mean Lyla's ownership in the properties covered by clause 11. It surely does not confer any right of ownership to Lyla. What it means is that Lyla shall have access to the contents of the locker and user thereof until Zenia attained the age of 21 years. The submission of Mr.Palan that this clause does not say that upon her attaining the age of 21 years, the contents of the locker shall belong to Zenia absolutely, does not have merit. Suffice it to say that it was not necessary to say so in view of clause 6, which says that upon Zenia completing the age

of 21 years, the trustees shall hand over all such properties to Zenia absolutely. Of course there is restriction on Zenia to sell the contents of the said locker as clause 11 clearly directs that none of the contents of the said locker can be sold, but otherwise, the properties covered by clause 11 vest absolutely in Zenia.

22. The construction that we have given to clause 11 also has to be given to clause 13 insofar as the jewellery contains in the box bearing the name of Lyla is concerned. The relevant part of clause 13 reads thus:

> "13. ..... As far as the box bearing the name of my daughter Lyla is concerned, the contents thereof shall belong to her but shall be held upon trust by my Trustees for my grand-daughter Zenia and the contents thereof shall be handed over by my Trustees to my grand daughter Zenia on her attaining the age of 21 years. I however, direct that one of the contents of the sold box are to be sold and if, however, any of the rings do not fit Lyla then the designs can be changed but in no way will there be a sale of the said jewellery."

In other words, Lyla has been held to have access to the jewellery box bearing her name and was entitled to use the same until Zenia attained the age of 21 years but there is no vesting of the jewellery in that box to the daughter Lyla.

23. Clause 14 of the Will, to the extent it is relevant, reads thus :

> "14. .....However, as far as the box bearing the name of my daughter Lyla and my grand-daughter Zenia are concerned, the contents thereof shall be held in trust by my trustees to be handed over upon her attaining the age of 21 years. I DIRECT however that none of the contents of the said boxes shall be sold but that the same should be used by the ultimate, beneficiaries. I own several watches which are in the house which are not named, I DIRECT that the same shall be divided equally between my two daughter Lyla and Anita and my grand daughter Zenia. However, such of the watches that would come to the share of my daughter Lyla and my grand-daughter Zenia shall be held in trust by my trustees for my grand-daughter Zenia to be handed over to my grand-daughter Zenia upon her attaining the age of 21 years."

In our view, without repeating the reasons, clause 14 also has to be read in the same manner as we have read clauses 11 and 13 and no distinct meaning can be given to this clause.

24. Clause 15 reads thus :

> "15. I have a flat on the 2nd floor of Gazadar House at 45, Warden Road, Bombay 400 026 belonging to me. I DIRECT my Trustees to dispose of the said flat as they may in their sole direction deem fit and out of the sales proceeds of the said flat. I DIRECT my Trustees to purchase two flats one to be bought in the joint names of my daughter Lyla and my grand-daughter Zenia and the other flat to be bought in the name of my daughter Anita to be held by them absolutely. I state that I am the absolute owner of the flat and neither Aba Temi

> Randeria now Mr. Soli Gazdar have any claim in respect of the said flat."

This clause is slightly different from the other clauses to the Will. It deals with the flat on the 2nd floor of Gazdar House at 45, Warden Road, Bombay. By this clause, she has directed the trustees to dispose of the said flat and out of the sale proceeds the trustees have been directed to purchase two flats, one to be bought in the joint names of her daughter Lyla and grand-daughter Zenia and the other flat in the name of her other daughter Anita. After purchase, one flat was to be held absolutely by Lyla and her daughter Zenia jointly and the other flat to be owned by other daughter Anita absolutely.

25. The counsel for the Appellant submitted that J.N.Patel, J.in his order dated 5th of February, 1997 in Misc.Petition No. 13 of 1995 in Writ Petition No. 598 of 1990 has recorded that the flat on the second floor of Gazdar House was occupied separately by Lyla and Anita i.e. half portion of the said flat was in occupation of Lyla in her capacity as tenant and the other half in occupation of Anita and that there was no dispute amongst the Respondents therein, regarding their respective tenancy rights being vested in them and that

was not the subject matter of the Will or the estate of the deceased, which was bequeathed under the Will. We do not think it necessary to comment upon the order of J.N.Patel, J.dated 5th February, 1997. But suffice it to say that on the plain reading of clause 15, no doubt is left that the flat on the second floor of the Gazdar house is the subject matter of the Will and the estate of the deceased Piloo Ghaswala, who has under her Will directed the trustees to dispose of the said flat and from the sale proceeds, purchase two flats, one jointly in the name of Lyla and Zenia and the other in the name of Anita.

26. We are informed by Mr. Rajeev Kumar, the counsel for the Respondents that insofar as half portion of the said flat in occupation of Anita is concerned, that portion has been sold by Anita already and other half portion continues to be in occupation of Lyla. Mr.Rajeev Kumar would submit that Zenia has now attained majority and that she has no objection if her mother Lyla continues to occupy the half portion of the said flat, which is in her possession presently. He, however, submitted that the said portion shall only be sold by the consent of Lyla and Zenia and in the negotiations of sale, Zenia should be involved and that Lyla should not create any third party right or interest

in the said flat. He also submitted that as and when the portion occupied by Lyla is sold, half of its sale proceeds must be given to Zenia. The intention of the testatrix has not been fully carried out as per clause 15 inasmuch as the Trustees did not dispose the flat on the second floor of the Gazdar House and since it was not disposed of by them, the question of purchasing two flats by the Trustees, as desired by the testatrix, did not arise. However, in our view, the submission of Mr.Rajeev Kumar deserves to be accepted that the sale of suit flat shall only be by consent of the mother and daughter, namely, Lyla and Zenia and that in the negotiations for sale Zenia should be involved; that Lyla shall not create any third party right or interest in the said flat and as and when the portion occupied by Lyla in the second floor of Gazdar house is sold to third party, the proceeds thereof shall be shared equally by Lyla and Zenia. This would be closest to the intention of the testatrix as set out in clause 15.

27. Clause 18 of the instrument deals with the bequeath in respect of the articles lying in the drawing room, details of which have been set out therein. Since it provides that these articles shall be held upon the Trust by the trustees for the benefit of grand-daughter Zenia and the said articles shall be handed over to her

(Zenia) upon her attaining the age of 21 years, the expression ".....I GIVE BEQUEATH AND DEVISE the same to my daughter Lyla", has to be read only to mean that Lyla was entitled to use the said articles until Zenia attained the age of 21 years. As a matter of fact this intention is made clear in the last part of clause 18 itself that mentions that Lyla shall be entitled to use the said articles till Zenia attains the age of 21 years.

28. Clause 24 is again with regard to certain articles in the drawing room and this clause is identical to clause 18. We need not repeat the construction and we hold, as we must, that the same construction, as has been given to clause 18, has to be given to clause 24 as well.

29. Now we turn to clause 40, which is with regard to one third share that the testatrix had in the trust of the Gazdar House. Clause 40 reads thus :-

> "40. I HAVE a one third share in the Trust of Gazdar House at 45, Warden Road, Bombay 400026, the other shares belonging to my cousin Jehangir Gamdar staying at Palisime Warden Road, share shall be equally distributed between my daughter Lyla and my daughter Anita. The share of my daughter Lyla shall be kept in trust by my Trustees to be handed over to my grand-daughter Zenia on her attaining the age of 21 years.

> I GIVE BEQUEATH AND DEVISE my daughter Anita's share in 1/3rd share in the Trust of Gazdar House to my daughter Anita absolutely."

30. The testatrix has provided by this clause that her 1/3rd share in the trust of Gazdar House shall be equally distributed between her two daughters Lyla and Anita and the share of Lyla must be kept in trust by the trustees to be handed over to Zenia on her attaining the age of 21 years. The disposition of the testatrix's estate referred to in clause 40, according to us, is very clear. Reading this clause with clauses 6 and 7, the intention of the testatrix is that half of the one third share in the trust of the Gazdar House must go to Zenia. She never intended that by distribution of share equally between Lyla and Anita, Lyla must become owner of that part of share distributed to her. That share vested in Zenia on opening of the Will (the date on which testatrix died) but that share was to be kept in the trust by the trustees to be made over to Zenia on the attaining of her age of 21 years.

31. Clause 42 is in respect of the Public Provident Fund Account of the testatrix. The provisions made thereunder read thus :

> "42. I am holding a Public Provident Fund Account with the State Bank of India, Main Branch No. 18976 in which the nomination has been made in the name of my daughters Lyla and Anita. The balance in the account as of the date should be around of Rs.70,000/-. I GIVE BEQUEATH AND DEVISE the balance in that account to my daughters Lyla and Anita in equal proportions. I however direct that my Trustees should hold Lyla's on behalf share in the said Account upon trust for the benefit of my grand daughter Zenia and the said balance shall be handed over to my grand -daughter Zenia upon my grand-daughter Zenia attaining the age of 21 years."

32. The construction that has been given by us to clause 40, in our considered view, must also follow for clause 42 as well. There appears to be no other intention of the testatrix.

33. We may, at this stage, refer to the decision of the Privy Council in the case of **Harris and Another vs. Brown and others, 28 Calcutta 621.** That was a case where one Thomas D'Silva died in the year 1857, leaving a Will executed in the month of January 1857. Clause 11 of the said will provided that the testatrix's residuary estate shall descend in equal shares to the eldest son to be born to each of the daughters of his late brother, who were then alive. It provided that the sons of those daughters should, after their birth, remain under the control of the executor, until they attain majority at the expiry of 21 years, and, whenever the eldest son of

any of the ladies attains majority, the executor will make over his share to him to his satisfaction. By clause 15 of the Will the testator declared that until the majority of whoever may be the eldest at the time amongst the sons of his brother's daughters, the estate shall remain in the hands of the executor absolutely and for all purposes. At the time of the testator's death, two daughters of his brother were living of whom Cecilia was married and Flora was unmarried. Cecilia had a son born in 1858, who lived to be 21 years of age and to whom, on his attaining that age, moiety of the estate was made over by the executor. Flora married George Williams in 1878; the only issue of the marriage being a son born in 1883, who lived only for a few hours. Construing Clasue 11, in the backdrop of these facts, it was held by the Privy Council that moiety of the estate vested in the sons of Cecilia and Flora on their birth. The vesting of the estate on the son was not suspended by the direction that the estate should remain in the hands of the executor, who should make over the share of each on his attaining 21 years. The word that the estate should remain in the hands of the executor merely pointed to the possession and enjoyment of the shares which had already been vested. It was thus held that on the birth of Flora's son, a moiety of the estate vested to him and after his death, passed to his father as his

heir.

34. The ratio in the case of Harris clearly applies to the facts of the present case. The estate of the testatrix which was to be made over to her grand daughter Zenia on her attaining the age of 21 years vested in Zenia on the opening of the Will i.e. on the death of the testatrix. This is also clear from Section 119 of the Indian Succession Act, 1925. Illustration-(ii) appended thereto that says " A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18 and on A’s death the legacy vests in B.", squarely applies here. The vesting of the estate to be handed over to Zenia as per the various clauses in the will on her attaining the age of 21 years, therefore, vested in her on 07.10.1989 i.e. the death of the testatrix. However, she become owner absolutely on her attaining 21 years, which is seen from clause 6 that provides : ....."upon Zenia completing the age of 21 years, my trustees shall hand over all such property to Zenia absolutely."

35. Mr. M.L. Palan, the counsel for the Appellant with all persuasion at his command repeatedly submitted that while construing the Will, the surrounding

circumstances must be seen and for that oral evidence was necessary to understand its contents. Suffice to say, if the Appellant thought that oral evidence was necessary to understand the contents of the Will, such request ought to have been made to the learned Chamber Judge, which was never done. At this distance of time, we are not persuaded by the repeated submission of the counsel for the Appellant that oral evidence was necessary to understand the contents of the Will for more than one reason. Firstly, if that were so, the Appellant ought not to have initiated the summary procedure of originating summons. After all, the complex issues of facts are never determined by originating summons procedure. It is the summary remedy for determination of all the aspects of construction of the written instrument. Secondly, if the Appellant thought that the oral evidence on some aspects was necessary to understand the contents of the instrument (Will), the Appellant could have always made such a prayer to the learned Chamber Judge, who would have then seen whether it was necessary or not. Besides that in a case like this, we are of the view that the oral evidence would be of no use and help for construction of various clauses of the Will as the said instrument is eloquent enough and the intention of the testatrix is clearly discernible from the Will when it is read as a

whole, as provided under section 82 of the Indian Succession Act.

36. We may record here that Mr.M.L.Palan, the counsel for the Appellant, did not dispute the legal position that the estate, that was to be handed over to Zenia on her attaining the age of 21 years, vested in her on the date the testatrix died. Even from the conduct of the appellant- Lyla, it is clear that she knew and had no doubt that she was holding the estate given by the testatrix to Zenia as Zenia's guardian and which was to be made over to Zenia on attaining her age of 21 years. On 15th February, 1999 the appellant sent a letter to the administrator Shri M.L.Dudhat, retired Judge, wherein she stated in paras 7 and 9 thus :-

> "7. As per the earlier Statement of Accounts filed by the Ex-Executors Rs.2.20 crores have been received on account of my 1/6th share to be paid to my daughter Zenia on her attaining 21 years i.e. 29th October, 2003. (emphasis supplied by us). A sum of Rs.60,00,000/- has been paid to acquire Pune property by earlier executors and the balance was invested in Fixed Deposit. A sum of Rs.15,47,411/- was received as an interest upto 6th August, 1996. Subsequently Rs.1,11,04,861/- was invested in State Bank of Mysore which subsequently re-invested from time to time with interest and become Rs.1,27,92,363/- referred to above. Rs.55,00,000/- were invested in Saving Bank Accounts with Corporation Bank for which Rs.59,34,225/- was received from Administrator General State of Maharashtra.
>
> 9. Under the provisions of Will the

> principal amount and jewellery is to be handed over to Zenia on her attaining 21 years on 29th October, 2003 and till then I alone is entitled to make use of it, which includes the interest and dividends and other income." (emphasis supplied)

. Then in the affidavit that has been filed by the Appellant in Misc. Petition (Ldg.) No. 50 of 1999 the Appellant stated in para (viii) thus :-

> ".....The amount realised from sale of Gazdar House after deducting investments and expenses and to be paid to said minor on her attaining majority on 28th October, 2003 has been invested in Fixed Deposit with Nationalized Bank with instruction to hand over the said amount so invested to minor on date of her attaining majority. The shares of various companies to be transferred in name of minor are directed to be kept in safe custody in a locker. The articles of jewelleries which are to be used by me till minor attains majority has been valued by an approved valuer and undertaking from me to hand over to minor on her attaining majority and in the meantime not to part with alter etc., has been given as directed by the Administrator and Court Receiver and filed by me in this High Court."

37. Mr. M.L. Palan argued that it would be highly inconceivable that Piloo would not provide any estate to her daughter Lyla. He submitted that the clauses of the Will should be read in such a manner that the part of the estate also goes to Lyla. The argument does not appeal us. The intention of the testatrix has to be gathered from the Will read as a whole. The contents of

the Will appear to us to be very clear. Whatever, the testatrix wanted to give to Lyla absolutely that has been provided therein. By clause 16, the testatrix has given the amount in Saving Account No.27411 with the Union Bank of India, absolutely to her daughter Lyla. Similarly, in clause 15 with regard to the flat on the 2nd floor of Gazdar House, the testatrix has provided the said flat to be sold and from the sale proceeds thereof, two flats must be purchased, one in the joint name of Lyla and Zenia and the other in the name of Anita.

38. Sections 187 and 188 of the Indian Succession Act, read thus :

> "187. When acceptance of benefit given by will constitutes election to take under will.-- Acceptance of a benefit given by a will constitutes an election by the legatee to take under the will, if he had knowledge of his right to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.
>
> 188. Circumstances in which knowledge or waiver is presumed of inferred.--(1) Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.
>
> . (2) Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest

in the same condition as if such act had not been done."

39. In **C.Beepathuma and Ors. vs. Velasari Shankaranarayana Kadambolithaya and ors., AIR 1965 Supreme Court 241,** the Supreme Court exposited the doctrine of election to the effect that one who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it. This principle is often put in another form that a person cannot approbate and reprobate the same transaction.

40. Having elected to receive the bequests as per the Will dated 12th April, 1989 it is too late in the day for her to put different constructions to various clauses under the Will.

41. Our answers to the questions raised for determination in originating summons No. 447 of 2003 are thus :-

QUESTIONS	ANSWERS
(a) Whether the bequeaths	(a) As per the construction

made in favour of the Plaintiff by the deceased Pillo under the said Will dt.12th April,1989, inte-ralia under clauses 11,13 14,15,18,24,40 and 42 are absolute bequeaths to the Plaintiff ?

put by us to various clauses in the body of the judgment.

(b)Whether the directions of the deceased Piloo interalia in said Will including in clauses 11, 13,14,15,18,24,40 & 42 of the said Will viz.to hold the shares/bequeathes of the Plaintiff upon trust to be handed over to Defendant onher attaining the age of 21 years are illegal and or in-opera--tive or unenforceable against the Plaintiff or binding upon thePlaintiff or beyond the power and

(b) The directions of the deceased Piloo in the Will including in the Clauses 11 13,14, 15, 18,24, 40 and 42 to hold the shares/bequeath-es upon trust to be handed over to Zenia on her attai-aining the age of 21 years are neither illegal nor in-operative or unenforceable against Lyla. These clauses are binding upon Lyla and are not beyond the power and authority of the deceased Pilloo.

authority vested on the deceased Pilloo.	
(c) Assuming without admitting that the directions in the said Will including Clauses 11,13,14,15,18,24,40 & 42 to hold shares of Plaintiff upon trust to be handed over to Defendant on her attaining the age of 21 years are legal and binding upon the Plaintiff and / or Defendant. Whether the Plaintiff alone is entitled to enjoy all the bequeaths/ profit/ income & other benefits till Defendant attained age of 21 years.	(c) As per the construction put by us to these clauses in the Will, the estate vested in Zenia on the date of death of the testatrix; its handing over was deferred until Zenia attained the age of 21 years Lyla is not entitled to income or other monetary benefits from the said estate until Zenia attained the age of 21 years.

42. In so far as the questions raised in the

originating Summons No. 309 of 2000 from which Appeal No.163 of 2005 arieses, are concerned, the counsel for the Appellant did not specifically argue the said Appeal and he submitted that the questions raised in Originating Summons No.447 of 2003 sufficiently cover the controversy raised in originating summons No. 309 of 2000. In this view of the matter, we do not deem it necessary to deal with the questions specifically raised in Originating Summons No.309 of 2000 from which Appeal No. 163 of 2005 arises. Suffice it to say that the construction put by us to the various clauses of the Will dated 12.04.1989 and the answers given to those questions raised in originating Summons No. 447 of 2003, decide the Appeal No. 163 of 2005 as well. Needless to say that on the basis of such construction, Testamentary Petition No.50 of 1999 before the learned single Judge shall be heard and decided.

43. Appeal Nos.80 of 2000 and 81 of 2000 are the Appeals from the same order i.e. dated 22nd December, 1999. Appeal No. 80 of 2000 relates to the administrator’s report which has not been accepted by the learned single Judge. Appeal No. 81 of 2000 is from the part of the said order i.e. dated 22nd December, 1999, making the notice of motion, taken out by the father and guardian of Zenia, absolute.

44. By the common order dated 22nd of December, 1999 the learned single Judge disposed of the administrator's report dated 8th of March, 1999 and Notice of Motion No. 2566 of 1999 taken out by the father of Zenia, as her guardian. The learned single Judge did not approve the Administrators report and Notice of Motion No. 2566 of 1999 was made absolute with a direction to the present Appellant to bring back the moneys disbursed to her by the Administrator on the basis of the order dated 1st April, 1999. The present Appellant was directed to deposit in Court the money within a period of six weeks there from. The learned single Judge also directed the Solicitors, L.C.Tolat & Co. to deposit the sum of Rs.9,11,152/- in Court within a period of six weeks from that date and directed the Prothonotary and Senior Master, to invest the amount in fixed deposit with a nationalised bank for a period at the discretion of the Prothonotary and Senior Master.

45. The Appeals (80 and 81 of 2000) in our considered view, have to be dismissed. As a matter of fact, the counsel for the Appellant did not argue these Appeals specifically and submitted that the construction put by us to various clauses of the Will decides these Appeals as well. In the light of the construction put up

by us to the various clauses of the Will, we hold that the learned single Judge did not commit any error in not approving the administrator's report and making the notice of motion No. 2566 of 1999 absolute with direction to the present Appellant to bring back the moneys disbursed to her by the administrator.

46. As regards the direction given by the learned single Judge to the Solicitors, L.C.Tolat & Co. to deposit a sum of Rs. 9,11,152/- in Court, we are informed by Mr. R.N.Tolat, the counsel for the L.C.Tolat & Co. that an Appeal against this part of the order being Appeal No.83 of 2000 was withdrawn on 4th April, 2000 with liberty to the Solicitors to make application before the learned single Judge, which in fact was done and by the order dated 27th July, 2000, the learned single Judge modified the order by directing the Solicitors to give an undertaking to this court to pay the aforesaid amount in the court in the event the Appeals Nos. 80 and 81 of 2000 are dismissed. Pursuant thereto an undertaking has been given by the Solicitors, L.C.Tolat and Co., on 28th July, 2000. Now since the Appeal Nos.80 and 81 have been dismissed by us, obviously the Solicitors, L.C.Tolat and Co. have to deposit in court the said amount of Rs.9,11,152/- as per the order dated 22nd December, 1999.

47. Appeal No.508 of 2005 arises from the order dated 24th June 2005 on the Notice of Motion taken out by Zenia on her attaining the age of 21 years. By that Notice of motion, Zenia prayed that direction be issued to the Bank of Baroda, Bhulabhai Desai Road Branch, Mumbai to pay over to her the amount of two fixed deposits in the sum of Rs. 1,27,00,923=63/- and Rs.15,50,000=00/- kept in the fixed deposit with the said Bank in the name of the Administrator with accrued interest on both the said fixed deposits and the Advocate of the Appellant who has in his possession the fixed deposit receipts be directed to make available the same to the said bank for discharge. The Applicant Zenia also sought for various other reliefs. The prayers in the notice of motion taken out by Zenia are reproduced as under :

> "(a) Necessary orders and directions be passed directing the Bank of Baroda, Bhulabhai Desia Road Branch, Mumbai to pay over to the Applicant within the time that may be fixed by this Hon'ble Court the amounts of two fixed deposits in a sum of Rs.1,27,00,923.63 (Rupees One Crore Twenty Seven Lacs Nine Hundred Twenty Three and Sixty Three paise only) and Rs. 15,50,000.00/- (Rupees Fifteen Lacs Fifty Thousand Only) kept in the fixed deposit with the said bank in the name of Administrator Justice M.L.Dudhat (Retd.) with accrued interest of both the said fixed deposits and the Advocates of the First Respondent who has in his possession the fixed deposit receipt be directed

to make the said two fixed deposit receipts available to the said bank for discharge.

(b) That the Prothonotary and Senior Master, High Court, Bombay be directed to pay to the Applicant within the time that may be fixed by this Hon'ble Court a sum of Rs. 7,50,000/- (Rupees Seven Lacs Fifty Thousand only) with accrued interest thereto deposited by M/s.L.C. Tolat & Co. in the aforesaid proceedings by prematurely discharging the said fixed deposit receipts.

(c) The necessary orders and directions be passed by this Hon'ble Court directing the Hongkong and Shanghai Banking Corporation Ltd., M.G.Road, Bombay to pay over to the Applicant within the time that may be fixed by this Hon'ble Court the total amount lying credit to the savings bank account No.002-1523346-066.

(d) Necessary orders and directions be passed directing the Bank of Baroda, Bhulabhai Desai Road Branch to open the safe deposit locker standing in the name of Ex-Administrator Justice M.L.Dudhat (Retd.). The keys of which locker are lying with the Advocates of Respondent No.1 and all the shares lying in the locker as per the list mentioned in Ex."A" to the Administrator's report dated 8th March, 1999 be handed over to the Applicant within the time that may be fixed by this Hon'ble Court.

(e) The Court Receiver, High Court, Bombay be directed to hand over to the Applicant the jewellery and other Articles of ornaments lying with the Court Receiver, High Court, Bombay belonging to the estate of the said late Mrs.Pilloo Ghaswalla and in respect of which Jewelry and articles the Court Receiver, High Court, Bombay has been appointed."

48. The learned single Judge by the order dated 24th of June, 2005 passed the following order :

"a. Court Receiver is directed to hand over to the applicant an amount of Rs.1,27,00,923=63

and Rs.15,50,000/- by encashing the Fixed Deposits with the Bank of Baroda along with accrued interest thereon.

b. Court Receiver is also directed to hand over to the applicant, the Jewellery and other articles of ornaments lying with the Court Receiver, High Court, Bombay and belonging to the estate of the said deceased, Piloo Ghaswalla.

c. The Hongkong and Shanghai Banking Corporation Ltd., M.G.Road, Mumbai is directed to pay over to the Applicant the total amount lying credit to the savings bank account No.002-1523346-006."

49. Mr.M.L. Palan, did not argue this Appeal specifically and submitted that the fate of this Appeal is also dependent on the construction put by us to the various clauses of the Will. The directions given by the learned single Judge are in conformity with the construction of the various clauses of the Will put by us and, therefore, call for no interference.

50. In the result, we dispose of this group of five Appeals by the following order :

i. Appeal Nos. 163 of 2005 and 164 of 2005 are disposed of as indicated above.

ii. Appeal Nos.80 and 81 of 2000 are dismissed.

iii. Appeal No.508 of 2005 is also dismissed.

iv. The interim orders passed in these Appeals shall stand discharged.

51. Oral prayer for stay of our judgment made by the counsel for the Appellant as well as by Mr. R.L. Tolat, counsel for the Respondent No.9, is rejected.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

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